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JOINT STATUS REPORT - 1

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Attorneys for Plaintiffs Astria Health, et al.

7 UNITED STATES BANKRUPTCY COURT  
8 EASTERN DISTRICT OF WASHINGTON

9 In re: ) Case No. 19-01189-WLH11  
10 ASTRIA HEALTH, et al., )  
11 Debtor(s) )  
12 ASTRIA HEALTH, et al., ) Adv. Proc. No. 21-80005-WLH  
13 )  
14 Plaintiffs, )  
15 )  
16 v. ) JOINT STATUS REPORT  
17 )  
18 CERNER CORPORATION AND )  
19 CERNER REVWORKS, LLC, )  
20 )  
21 Defendants. )  
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20 In accordance with the Court's notice of scheduling conference (ECF No. 3),  
21 Fed. R. Civ. P. 16(b) and 26(f), and LBR 7016-1(b), Plaintiff Astria Health and  
22 Defendants/Counterclaimants Cerner Corporation and Cerner Revenue Cycle, LLC  
23 (f/k/a Cerner RevWorks, LLC) (collectively "Cerner") submit their Joint Status  
24 Report and Discovery Plan for the Adversary Proceeding.

JOINT STATUS REPORT - 2

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1       **I. Plaintiffs' Statement of the Case**

2       Astria is a non-profit healthcare system, consisting of, as of the  
3       commencement of the underlying bankruptcy cases, three hospitals, Sunnyside,  
4       Yakima, and Toppenish, outpatient clinics, and other specialized health care  
5       centers. In an effort to win Astria's business, Cerner misrepresented the  
6       capabilities of its products, the expertise of its staff, and the experiences of its other  
7       customers. In reliance on Cerner's misstatements, Astria entered into the Business  
8       Agreement on June 30, 2017 for an electronic health record ("EHR") and revenue  
9       cycle management software platform and the RevWorks Agreement on June 26,  
10      2018 for patient billing and cash collections services (together with the Business  
11      Agreement, the "Agreements"). Cerner's system never operated as promised  
12      during the sales process or as memorialized in the Agreements. After signing the  
13      Agreements, Astria also learned of other serious cash collection issues faced by  
14      other hospitals systems using Cerner's platform, which Cerner had failed to  
15      disclose, despite questioning by Astria prior to signing the RevWorks Agreement.  
16      Had Cerner been honest about what its system and staff could deliver or the  
17      problems faced by other customers, Astria would not have entered into these  
18      Agreements with Cerner.

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JOINT STATUS REPORT - 3

1           **II. Defendants' Statement of the Case**

2           Astria is a healthcare system based in Eastern Washington. Cerner is a  
3 developer of electronic health record (“EHR”) software platforms for health  
4 systems in the United States and internationally. In June 2017, Astria entered into  
5 the Cerner Business Agreement (“CBA,” ECF No. 11) with Cerner to license,  
6 implement, and deliver an EHR software platform. In June 2018, Astria also  
7 contracted with Cerner for Cerner’s RevWorks services (the “RevWorks  
8 Agreement”, ECF No. 12) for patient billing and collections. Astria alleges  
9 Cerner’s EHR systems failed to perform as promised and its RevWorks services  
10 were deficient.

11           In its counterclaims, Cerner alleges Astria failed to pay Cerner amounts due  
12 under the parties’ agreements and failed to perform its reciprocal responsibilities  
13 under the CBA and RevWorks, including but not limited to in collecting revenue.

14           **III. Joint Statement of Claims Made by the Parties**

15           Astria has sued Cerner for fraud in the inducement, negligent  
16 misrepresentation, violations of the Washington Consumer Protection Act (“CPA”),  
17 gross negligence, avoidance of obligations and transfers under 11 U.S.C. §§ 548,  
18 544 and Washington State Law, disallowance of all claims asserted by Cerner,  
19 breach of contract, and breach of warranty. (ECF No. 1). Cerner denies all claims  
20 and has moved to dismiss Astria’s claim that it violated the CPA (ECF No. 20).

21           JOINT STATUS REPORT - 4

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1 Astria's Opposition to Cerner's Partial Motion to Dismiss will be filed on Monday,  
2 May 17, pursuant to the Notice of Motion and Hearing (ECF No. 22).  
3

4 Cerner has counterclaimed and asserts claims against Astria for breach of the  
5 CBA, breach of the RevWorks Agreement, and an alternative claim for quantum  
6 meruit. (ECF No. 24). Astria's responsive pleading will be filed on Thursday, May  
7 13, pursuant to Fed. R. Bankr. P. 7012.

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9 **IV. The possibilities for prompt settlement or resolution**

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11 In accordance with LBR 9019-2, the parties have discussed and continue to  
12 consider participating in mediation to resolve the dispute.

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14 **V. Schedule**

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16 **A. Cerner's Proposed Schedule**

- 17 1. Rule 26 disclosures: June 1, 2021;
- 18 2. Joining additional parties: August 1, 2021;
- 19 3. Amending Pleadings: August 1, 2021;
- 20 4. Fact discovery closes: December 1, 2021;
- 21 5. Plaintiffs' expert witness disclosures in accordance with Fed. R.
- 22 Civ. P. 26(a)(2): December 15, 2021;
- 23 6. Defendants' expert witness disclosures in accordance with Fed.
- 24 R. Civ. P. 26(a)(2): January 15, 2022;
- 25 7. Expert discovery closes: February 15, 2022; and

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28 **JOINT STATUS REPORT - 5**

1                   8.     Deadline for filing dispositive motions: March 1, 2022  
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4                   **B.     Astria's Proposed Schedule**  
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7                   1.     Rule 26 disclosures: June 1, 2021;  
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9                   2.     Joining additional parties: Astria's position is that it needs to  
10                  reserve its rights to join additional parties after August 1, 2021 for the  
11                  limited purpose of potentially adding any successor to or purchaser of  
12                  Cerner Revenue Cycle, LLC's (f/k/a Cerner RevWorks, LLC) assets  
13                  because Astria understands that Cerner may object to producing  
14                  transaction documents related to the sale of RevWorks to R1 RCM  
15                  Inc.;

16                  3.     Amending Pleadings: Astria's position is that it needs to reserve  
17                  its rights to amend the pleadings after August 1, 2021 for the limited  
18                  purpose of potentially adding any successor to or purchaser of Cerner  
19                  Revenue Cycle, LLC's (f/k/a Cerner RevWorks, LLC) assets because  
20                  Astria understands that Cerner may object to producing transaction  
21                  documents related to the sale of RevWorks to R1 RCM Inc.

22                  4.     Fact discovery closes: December 1, 2021;  
23  
24

25                  5.     Plaintiffs' expert witness disclosures in accordance with Fed. R.  
26                  Civ. P. 26(a)(2): December 15, 2021;  
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1       6. Defendants' expert witness disclosures in accordance with Fed.  
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3       R. Civ. P. 26(a)(2): January 15, 2022;  
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5       7. Expert discovery closes: February 15, 2022; and  
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8       8. Deadline for filing dispositive motions: March 1, 2022

7  
**VI. Discovery plan**

8       **A. Discovery subjects and phasing**

9       Astria will seek discovery related to Cerner's marketing and sales processes  
10 and strategies for the products and services covered by the Agreements, including  
11 but not limited to CommunityWorks and RevWorks, to both Astria and other  
12 hospitals and health care providers; complaints and actions (formal and informal)  
13 of Cerner's other customers and the government (both as a customer and an  
14 enforcement entity); the functions, features, configuration and options for the  
15 products and services associated with the Agreements; the implementation,  
16 including go-live, of the products and services covered by the Agreements at Astria;  
17 staffing, training, minimum expertise requirements, and certification of Cerner  
18 employees; internal controls, tracking, escalation, metrics, and reporting of the  
19 relevant systems and services associated with the Agreements; complaints and  
20 problems reported by Astria to Cerner and Cerner's efforts to mitigate or address  
21 these concerns; Cerner's claims adjustment process; Cerner's employees' concerns  
22 about and knowledge of the deficiencies of its products, platform, services, or  
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JOINT STATUS REPORT - 7

1 expertise; Cerner's sale of any products or services to any government agency;  
2 Cerner's sale of RevWorks to R1; Cerner's Application Management Services  
3 (AMS); Cerner's Standard Scope for RevWorks' billing and collections platform,  
4 Revenue Cycle Management (RCM); required manual review and posting of  
5 claims; Cerner's outsourcing of its claims and collections; Cerner's efforts to  
6 comply with warranties and guarantees in the Agreements; and Cerner's offers to  
7 purchase of some of Astria's debt and pay an outside vendor to help fix their  
8 problems at Astria.

12 Cerner will seek discovery into Astria's financial and operational issues both  
13 before and after the parties entered into their contract, including but not limited to  
14 discovery of: Astria's key performance indicators, payer mix, board reports, audited  
15 financials, due diligence materials from Sunnyside's purchase of the Yakima and  
16 Toppenish facilities, Yakima and Toppenish's historic performance and trends  
17 before the acquisition by Sunnyside, outside evaluations of the purchase of Yakima  
18 and Toppenish, Astria's management structure and internal operations and  
19 performance by management personnel, Astria's debt structure, debt financing  
20 arrangements with creditors, payment obligations to creditors, Astria's  
21 discontinuation of services or procedures, Astria's decision to file for bankruptcy,  
22 and Astria's communications with its lenders. Cerner intends to seek discovery into  
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JOINT STATUS REPORT - 8

1 Astria's (and Sunnyside's, Yakima's, and Toppenish's before the combination)  
2 finances and operations from January 1, 2014 to present.  
3

4 The parties agree that phased discovery is not necessary.

5 **B. Electronically stored information**

6 The parties agree to cooperate in identifying responsive documents and  
7 producing electronically stored information in TIFF format, PDF format or other  
8 reasonably usable forms (such as native format for certain spreadsheets), along with  
9 accompanying load files containing the following categories of metadata where  
10 readily available (or any other set of metadata later agreed by the parties): document  
11 type, custodian, author/from, recipient/to/cc/bcc, title/subject, email subject, file  
12 name, date and time created/sent/modified/received. The parties agree to meet-and-  
13 confer about producing specific documents in other formats on a case-by-case basis.  
14

15 **C. Privilege**

16 The parties to not anticipate any unusual privilege issues.  
17

18 **D. Discovery limitations**

19 The parties agree to 25 interrogatories and 50 requests for production of  
20 documents per side.  
21

22 **E. Discovery orders**

23 The parties are working on a stipulated protective order and intend to present  
24 it to the Court on or before the May 12, 2021 discovery conference.  
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26 JOINT STATUS REPORT - 9  
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1      **I.      Other issues**

2      **A. Trial length**

3      The parties anticipate the trial will take five to ten days.

5      **B. Location of trial**

7      The parties agree the trial should take place in Yakima, Washington, or at  
8 another location the court may prefer.

9      Respectfully submitted this 7th day of May, 2021.

11      /s/ Bruce K. Medeiros

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32      Revenue Cycle, LLC*

34      *AND*

36      JOINT STATUS REPORT - 10

